

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

CENTRAL BANK,)	
)	
Plaintiff,)	
)	
v.)	No. 1:14-cv-01163
)	
CHRIS JERROLDs, and)	
BERKSHIRE HATHAWAY HOMESTATE)	
INSURANCE COMPANY D/B/A)	
THE KANSAS BANKERS SURETY)	
COMPANY,)	
)	
Defendants.)	

NOTICE OF AND PETITION FOR REMOVAL

COMES NOW the Defendant, Berkshire Hathaway Homestate Insurance Company d/b/a The Kansas Bankers Surety Company ("Berkshire"), pursuant to 28 U.S.C. § 1446, and files this Notice of and Petition for Removal of the above-styled case originally filed by the Plaintiff, Central Bank, in the Circuit Court for Hardin County, Tennessee. As grounds for removal of this action, Berkshire states as follows:

Central Bank's Complaint

1. On June 19, 2014, Central Bank filed a Complaint against Berkshire in the Circuit Court for Hardin County, Tennessee. Central Bank served Berkshire with process through the Tennessee Department of Insurance and Commerce on June 23, 2014.

2. Attached hereto as **Exhibit 1** is a copy of the Complaint and Summons to Berkshire, which upon information and belief, constitutes all process, pleadings, orders, and

other papers filed with the Circuit Court for Hardin County, Tennessee and that have been provided to Berkshire.

Federal Diversity Jurisdiction Exists

3. The Kansas Bankers Surety Company (“Kansas Bankers”) was an entity that formerly existed under the laws of Kansas with a principal place of business in Topeka, Kansas. Effective December 31, 2013, Kansas Bankers merged with and into Berkshire. Berkshire is an entity organized under the laws of Nebraska, and its principal place of business is located in Omaha, Nebraska.

4. As alleged in the Complaint, Central Bank is a banking institution authorized, organized, and chartered by the state of Tennessee, and its principal place of business is located in Savannah, Hardin County, Tennessee.

5. This is a civil action over which this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a), because Central and Berkshire have complete diversity of citizenship and the amount in controversy exceeds \$75,000.

Central Bank Fraudulently Misjoined Chris Jerrolds

6. Subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a) is proper despite the presence of Defendant Chris Jerrolds (“Jerrolds”) who, upon information and belief, is a citizen of Tennessee for jurisdictional purposes.

7. Central Bank fraudulently misjoined its claims against Jerrolds with its claims against Berkshire for the sole purpose of destroying diversity jurisdiction.

8. Berkshire has no joint, several or alternative liability with Jerrolds, and Central Bank’s claims against Berkshire have no real connection to Central Bank’s claims against Jerrolds.

9. Central Bank's dispute with Berkshire arises over coverage under Financial Institution Crime Bond No. 5020 TN (the "Bond"), which Kansas Bankers issued to Central Bank for the effective Bond Period of June 15, 2011 to June 15, 2012.

10. On or about March 28, 2013, Central Bank submitted a Proof of Loss to Kansas Bankers seeking coverage under the Bond for a purported loss of \$11,265,713.89, and additional potential loss of \$5,450,643.46.

11. As stated more fully in the Proof of Loss, Central Bank sought coverage for a purported loss from alleged dishonest or fraudulent acts committed by Jerrolds, who was Central Bank's former President and Chief Executive Officer.

12. Central Bank's Complaint asserts that Kansas Bankers breached the Bond by failing to promptly investigate and acknowledge coverage for Central Bank's claim.

13. Conversely, Central Bank's Complaint against Jerrolds asserts causes of action for "fraud, deceit, constructive fraud, negligence, gross negligence, breach of fiduciary duty, breach of his duties and as an employee and/or officer of Central, and a breach of his employment agreement with Central."

14. Central Bank's Complaint improperly combines two distinct legal and factual disputes. Although the genesis of Central Bank's claims against Berkshire and Jerrolds is Jerrolds' alleged employee dishonesty loss, joinder of those claims is not proper because they arise out of separate allegations of wrongdoing occurring at separate times and involve different factual and legal issues. *See Nsight Technologies, LLC v. Federal Insurance Co.*, 2009 WL 1106868 (S.D. Miss. April 23, 2009).

15. Moreover, the fact that Central Bank has a separate lawsuit already pending against Jerrolds involving the same issues and disputes as are asserted in its Complaint further

evidences the fact that Central Bank made Jerrolds a party for no reason other than to destroy diversity jurisdiction. *See* Complaint ¶ 15.

16. Because Central Bank misjoined its claims against Jerrolds with its claim against Berkshire, federal diversity jurisdiction exists over the claim by Central Bank against Berkshire. *See Tapscott v. MS Dealer Service Corp.*, 77 F.3d 1353, 1360 (11th Cir. 1996).

Removal and Notice are Timely

17. This Notice of and Petition for Removal is being filed within thirty (30) days after Berkshire received notice of the Complaint and is thus timely filed under 28 U.S.C. § 1446(b).

18. A copy of this Notice of and Petition for Removal will be filed with the Clerk of the Circuit Court for Hardin County, Tennessee, and served upon Central Bank's counsel in accordance with 28 U.S.C. § 1446(d).

WHEREFORE, Berkshire prays that the above action now pending in the Circuit Court for Hardin County, Tennessee be removed to this District Court, and for all other relief that this Court deems just and proper.

Respectfully submitted,

/s/ Thomas W. Whitworth

Jeffrey S. Price TN Bar No. 19950

Justin D. Wear TN Bar No. 23954

Thomas W. Whitworth TN Bar No. 29581

MANIER & HEROD

150 Fourth Avenue North, Suite 2200

Nashville, TN 37219

Phone: (615) 244-0030

Fax: (615) 242-4203

JPrice@manierherod.com

JWear@manierherod.com

TWhitworth@manierherod.com

Attorneys for Defendant Berkshire Hathaway
Homestate Insurance Company d/b/a The Kansas
Bankers Surety Company

Certificate of Service

I hereby certify that a true and accurate copy of this document was served upon the following via U.S. Mail on this 17th day of July, 2014.

James A. DeLanis

Joshua A. Mullen

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC

Baker Donelson Center, Suite 800

211 Commerce Street

Nashville, TN 37201

Chris Jerrolds

70 College Street

Savannah TN 38372

/s/ Thomas W. Whitworth